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HOUSE BILL 424

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Daniel P. Silva

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; CREATING FILING AND PAYMENT REQUIREMENTS FOR GASOLINE AND SPECIAL FUEL RETAILERS, WHOLESALERS, RACK OPERATORS AND DISTRIBUTORS; MODIFYING CONFIDENTIALITY REQUIREMENTS; CLARIFYING LIABILITY PROVISIONS FOR THE SPECIAL FUEL INVENTORY TAX; AUTHORIZING THE SECRETARY OF TAXATION AND REVENUE TO TERMINATE INTERSTATE AGREEMENTS FOR SPECIAL FUEL TAX COLLECTIONS; PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] CIVIL PENALTY FOR FAILURE TO FILE AN INFORMATION RETURN.--A taxpayer who fails to file an information return on time pursuant to the Gasoline Tax Act or the Special Fuels Supplier Tax Act shall pay a penalty of fifty .152002.2

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1 dollars (\$50.00) for each late report. This penalty shall be
2 in addition to other applicable penalties."

3 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
4 Chapter 248, Section 13, as amended by Laws 2003, Chapter 398,
5 Section 5 and by Laws 2003, Chapter 439, Section 1) is amended
6 to read:

7 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
8 INFORMATION.--It is unlawful for an employee of the department
9 or a former employee of the department to reveal to an
10 individual other than another employee of the department
11 information contained in the return of a taxpayer made pursuant
12 to a law subject to administration and enforcement under the
13 provisions of the Tax Administration Act or any other
14 information about a taxpayer acquired as a result of [~~his~~] the
15 employee's employment by the department and not available from
16 public sources, except:

17 A. to an authorized representative of another
18 state; provided that the receiving state has entered into a
19 written agreement with the department to use the information
20 for tax purposes only and that the receiving state has enacted
21 a confidentiality statute similar to this section to which the
22 representative is subject;

23 B. to a representative of the secretary of the
24 treasury or the secretary's delegate pursuant to the terms of a
25 reciprocal agreement entered into with the federal government

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1 for exchange of the information;

2 C. to the multistate tax commission or its
3 authorized representative; provided that the information is
4 used for tax purposes only and is disclosed by the multistate
5 tax commission only to states that have met the requirements of
6 Subsection A of this section;

7 D. to another jurisdiction pursuant to an
8 international fuel tax agreement, provided that the information
9 is used for tax purposes only;

10 [~~D.~~] E. to a district court, an appellate court or
11 a federal court:

12 (1) in response to an order thereof in an
13 action relating to taxes to which the state is a party and in
14 which the information sought is about a taxpayer who is party
15 to the action and is material to the inquiry, in which case
16 only that information may be required to be produced in court
17 and admitted in evidence subject to court order protecting the
18 confidentiality of the information and no more;

19 (2) in an action in which the department is
20 attempting to enforce an act with which the department is
21 charged or to collect a tax; or

22 (3) in any matter in which the department is a
23 party and the taxpayer has put [~~his~~] the taxpayer's own
24 liability for taxes at issue, in which case only that
25 information regarding the taxpayer who is party to the action

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1 may be produced, but this shall not prevent the disclosure of
2 department policy or interpretation of law arising from
3 circumstances of a taxpayer who is not a party;

4 ~~[E.]~~ F. to the taxpayer or to the taxpayer's
5 authorized representative; provided, however, that nothing in
6 this subsection shall be construed to require any employee to
7 testify in a judicial proceeding except as provided in
8 Subsection ~~[D]~~ E of this section;

9 ~~[F.]~~ G. information obtained through the
10 administration of a law not subject to administration and
11 enforcement under the provisions of the Tax Administration Act
12 to the extent that release of that information is not otherwise
13 prohibited by law;

14 ~~[G.]~~ H. in a manner, for statistical purposes, that
15 the information revealed is not identified as applicable to an
16 individual taxpayer;

17 ~~[H.]~~ I. with reference to information concerning
18 the tax on tobacco imposed by Sections 7-12-1 through 7-12-13
19 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of
20 the legislature for a valid legislative purpose or to the
21 attorney general for purposes of Section 6-4-13 NMSA 1978 and
22 the master settlement agreement defined in Section 6-4-12 NMSA
23 1978;

24 ~~[I.]~~ J. to a transferee, assignee, buyer or lessor
25 of a liquor license, the amount and basis of an unpaid

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1 assessment of tax for which [~~his~~] the transferor, assignor,
2 seller or lessee is liable;

3 [~~J.~~] K. to a purchaser of a business as provided in
4 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
5 of an unpaid assessment of tax for which the purchaser's seller
6 is liable;

7 [~~K.~~] L. to a municipality of this state upon its
8 request for a period specified by that municipality within the
9 twelve months preceding the request for the information by that
10 municipality:

11 (1) the names, taxpayer identification numbers
12 and addresses of registered gross receipts taxpayers reporting
13 gross receipts for that municipality under the Gross Receipts
14 and Compensating Tax Act or a local option gross receipts tax
15 imposed by that municipality. The department may also release
16 the information described in this paragraph quarterly or upon
17 such other periodic basis as the secretary and the municipality
18 may agree; and

19 (2) information indicating whether persons
20 shown on a list of businesses located within that municipality
21 furnished by the municipality have reported gross receipts to
22 the department but have not reported gross receipts for that
23 municipality under the Gross Receipts and Compensating Tax Act
24 or a local option gross receipts tax imposed by that
25 municipality.

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1 The employees of municipalities receiving information as
2 provided in this subsection shall be subject to the penalty
3 contained in Section 7-1-76 NMSA 1978 if that information is
4 revealed to individuals other than other employees of the
5 municipality in question or the department;

6 ~~[H.]~~ M. to the commissioner of public lands for use
7 in auditing that pertains to rentals, royalties, fees and other
8 payments due the state under land sale, land lease or other
9 land use contracts; the commissioner of public lands and
10 employees of the commissioner are subject to the same
11 provisions regarding confidentiality of information as
12 employees of the department;

13 ~~[M.]~~ N. the department shall furnish, upon request
14 by the child support enforcement division of the human services
15 department, the last known address with date of all names
16 certified to the department as being absent parents of children
17 receiving public financial assistance. The child support
18 enforcement division personnel shall use such information only
19 for the purpose of enforcing the support liability of the
20 absent parents and shall not use the information or disclose it
21 for any other purpose; the child support enforcement division
22 and its employees are subject to the provisions of this section
23 with respect to any information acquired from the department;

24 ~~[N.]~~ O. with respect to the tax on gasoline imposed
25 by the Gasoline Tax Act, the department shall make available

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1 for public inspection at monthly intervals a report covering
2 the number of gallons of gasoline and ethanol blended fuels
3 received and deducted, and the amount of tax paid by each
4 person required to file a gasoline tax return or pay gasoline
5 tax in the state of New Mexico;

6 [Θ-] P. the identity of a rack operator, importer,
7 blender, supplier or distributor and the number of gallons
8 reported on returns required under the Gasoline Tax Act,
9 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
10 rack operator, importer, blender, distributor or supplier, but
11 only when it is necessary to enable the department to carry out
12 its duties under the Gasoline Tax Act, the Special Fuels
13 Supplier Tax Act or the Alternative Fuel Tax Act;

14 [P-] Q. the department shall release upon request
15 only the names and addresses of all gasoline or special fuel
16 distributors, wholesalers and retailers to the New Mexico
17 department of agriculture, the employees of which are thereby
18 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
19 that information is revealed to individuals other than
20 employees of either the New Mexico department of agriculture or
21 the department;

22 [Q-] R. the department shall answer all inquiries
23 concerning whether a person is or is not a registered taxpayer
24 for tax programs that require registration, but nothing in this
25 section shall be construed to allow the department to answer

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1 inquiries concerning whether a person has filed a tax return;

2 ~~[R-]~~ S. upon request of a municipality or county of
3 this state, the department shall permit officials or employees
4 of the municipality or county to inspect the records of the
5 department pertaining to an increase or decrease to a
6 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
7 1978 for the purpose of reviewing the basis for the increase or
8 decrease. The municipal or county officials or employees
9 receiving information provided in this subsection shall not
10 reveal that information to any person other than another
11 employee of the municipality or the county, the department or a
12 district court, an appellate court or a federal court in a
13 proceeding relating to a disputed distribution and in which
14 both the state and the municipality or county are parties.
15 Information provided pursuant to provisions of this subsection
16 that is revealed other than as provided in this subsection
17 shall subject the person revealing the information to the
18 penalties contained in Section 7-1-76 NMSA 1978;

19 ~~[S-]~~ T. to a county of this state that has in
20 effect a local option gross receipts tax imposed by the county
21 upon its request for a period specified by that county within
22 the twelve months preceding the request for the information by
23 that county:

24 (1) the names, taxpayer identification numbers
25 and addresses of registered gross receipts taxpayers reporting

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1 gross receipts either for that county in the case of a local
2 option gross receipts tax imposed on a countywide basis or only
3 for the areas of that county outside of any incorporated
4 municipalities within that county in the case of a county local
5 option gross receipts tax imposed only in areas of the county
6 outside of any incorporated municipalities. The department may
7 also release the information described in this paragraph
8 quarterly or upon such other periodic basis as the secretary
9 and the county may agree;

10 (2) in the case of a local option gross
11 receipts tax imposed by a county on a countywide basis,
12 information indicating whether persons shown on a list of
13 businesses located within the county furnished by the county
14 have reported gross receipts to the department but have not
15 reported gross receipts for that county under the Gross
16 Receipts and Compensating Tax Act or a local option gross
17 receipts tax imposed by that county on a countywide basis; and

18 (3) in the case of a local option gross
19 receipts tax imposed by a county only on persons engaging in
20 business in that area of the county outside of incorporated
21 municipalities, information indicating whether persons on a
22 list of businesses located in that county outside of the
23 incorporated municipalities but within that county furnished by
24 the county have reported gross receipts to the department but
25 have not reported gross receipts for that county outside of the

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1 incorporated municipalities within that county under the Gross
2 Receipts and Compensating Tax Act or a local option gross
3 receipts tax imposed by the county only on persons engaging in
4 business in that county outside of the incorporated
5 municipalities.

6 The officers and employees of counties receiving
7 information as provided in this subsection shall be subject to
8 the penalty contained in Section 7-1-76 NMSA 1978 if the
9 information is revealed to individuals other than other
10 officers or employees of the county in question or the
11 department;

12 [~~F.~~] U. to authorized representatives of an Indian
13 nation, tribe or pueblo, the territory of which is located
14 wholly or partially within New Mexico, pursuant to the terms of
15 a reciprocal agreement entered into with the Indian nation,
16 tribe or pueblo for the exchange of that information for tax
17 purposes only; provided that the Indian nation, tribe or pueblo
18 has enacted a confidentiality statute similar to this section;

19 [~~U.~~] V. information with respect to the taxes or
20 tax acts administered pursuant to Subsection B of Section 7-1-2
21 NMSA 1978, except that:

22 (1) information for or relating to a period
23 prior to July 1, 1985 with respect to Sections 7-25-1 through
24 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
25 to a committee of the legislature for a valid legislative

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1 purpose;

2 (2) except as provided in Paragraph (3) of
3 this subsection, contracts and other agreements between the
4 taxpayer and other parties and the proprietary information
5 contained in those contracts and agreements shall not be
6 released without the consent of all parties to the contract or
7 agreement; and

8 (3) audit workpapers and the proprietary
9 information contained in the workpapers shall not be released
10 except to:

11 (a) the minerals management service of
12 the United States department of the interior, if production
13 occurred on federal land;

14 (b) a person having a legal interest in
15 the property that is subject to the audit;

16 (c) a purchaser of products severed from
17 a property subject to the audit; or

18 (d) the authorized representative of any
19 of the persons in Subparagraphs (a) through (c) of this
20 paragraph. This paragraph does not prohibit the release of
21 proprietary information contained in the workpapers that is
22 also available from returns or from other sources not subject
23 to the provisions of this section;

24 [V-] W. information with respect to the taxes,
25 surtaxes, advance payments or tax acts administered pursuant to

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1 Subsection C of Section 7-1-2 NMSA 1978;

2 [W-] X. to the public regulation commission,
3 information with respect to the Corporate Income and Franchise
4 Tax Act required to enable the commission to carry out its
5 duties;

6 [~~X-~~] Y. to the state racing commission, information
7 with respect to the state, municipal and county gross receipts
8 taxes paid by [~~race tracks~~] racetracks;

9 [~~Y-~~] Z. upon request of a corporation authorized to
10 be formed under the Educational Assistance Act, the department
11 shall furnish the last known address and the date of that
12 address of every person certified to the department as an
13 absent obligor of an educational debt due and owed to the
14 corporation or that the corporation has lawfully contracted to
15 collect. The corporation and its officers and employees shall
16 use that information only to enforce the educational debt
17 obligation of the absent obligors and shall not disclose that
18 information or use it for any other purpose;

19 [~~Z-~~] AA. a decision and order made by a hearing
20 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a
21 protest filed with the secretary on or after July 1, 1993;

22 [~~AA-~~] BB. information required by a provision of
23 the Tax Administration Act to be made available to the public
24 by the department;

25 [~~BB-~~] CC. upon request by the Bernalillo county

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1 metropolitan court, the department shall furnish the last known
2 address and the date of that address for every person the court
3 certifies to the department as a person who owes fines, fees or
4 costs to the court or who has failed to appear pursuant to a
5 court order or a promise to appear;

6 ~~[GG.]~~ DD. upon request by a magistrate court, the
7 department shall furnish the last known address and the date of
8 that address for every person the court certifies to the
9 department as a person who owes fines, fees or costs to the
10 court or who has failed to appear pursuant to a court order or
11 a promise to appear;

12 ~~[DD.]~~ EE. to the national tax administration
13 agencies of Mexico and Canada, provided the agency receiving
14 the information has entered into a written agreement with the
15 department to use the information for tax purposes only and is
16 subject to a confidentiality statute similar to this section;

17 ~~[EE.]~~ FF. to a district attorney, a state district
18 court grand jury or federal grand jury for an investigation of
19 or proceeding related to an alleged criminal violation of the
20 tax laws;

21 ~~[FF.]~~ GG. to a third party subject to a subpoena or
22 levy issued pursuant to the provisions of the Tax
23 Administration Act, the identity of the taxpayer involved, the
24 taxes or tax acts involved and the nature of the proceeding;

25 [~~and~~

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1 ~~GG.]~~ HH. to the gaming control board, tax returns
2 of license applicants and their affiliates as defined in
3 Subsection E of Section 60-2E-14 NMSA 1978; and

4 II. any written ruling on questions of evidence or
5 procedure made by a hearing officer pursuant to Section 7-1-24
6 NMSA 1978; provided that the name and identification number of
7 the taxpayer requesting the ruling shall not be provided."

8 Section 3. Section 7-1-13.1 NMSA 1978 (being Laws 1988,
9 Chapter 99, Section 3, as amended) is amended to read:

10 "7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

11 A. Payment of the taxes, including any applicable
12 penalties and interest, described in Paragraph (1), (2), [~~or~~]
13 (3) or (4) of this subsection shall be made on or before the
14 date due in accordance with Subsection B of this section if the
15 taxpayer's average tax payment for the group of taxes during
16 the preceding calendar year equaled or exceeded twenty-five
17 thousand dollars (\$25,000):

18 (1) Group 1: all taxes due under the
19 Withholding Tax Act, the Gross Receipts and Compensating Tax
20 Act, local option gross receipts tax acts, the Interstate
21 Telecommunications Gross Receipts Tax Act and the Leased
22 Vehicle Gross Receipts Tax Act;

23 (2) Group 2: all taxes due under the Oil and
24 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
25 the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad

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1 Valorem Production Tax Act; [~~or~~]

2 (3) Group 3: the tax due under the Natural
3 Gas Processors Tax Act; or

4 (4) Group 4: all taxes and fees due under the
5 Gasoline Tax Act, the Special Fuels Supplier Tax Act and the
6 Petroleum Products Loading Fee Act.

7 For taxpayers who have more than one identification number
8 issued by the department, the average tax payment shall be
9 computed by combining the amounts paid under the several
10 identification numbers.

11 B. Taxpayers who are required to make payment in
12 accordance with the provisions of this section shall make
13 payment by one or more of the following means on or before the
14 due date so that funds are immediately available to the state
15 on or before the due date:

16 (1) electronic payment; provided that a result
17 of the payment is that funds are immediately available to the
18 state of New Mexico on or before the due date;

19 (2) currency of the United States;

20 (3) check drawn on and payable at any New
21 Mexico financial institution provided that the check is
22 received by the department at the place and time required by
23 the department at least one banking day prior to the due date;
24 or

25 (4) check drawn on and payable at any domestic

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1 non-New Mexico financial institution provided that the check is
2 received by the department at the time and place required by
3 the department at least two banking days prior to the due date.

4 C. If the taxes required to be paid under this
5 section are not paid in accordance with Subsection B of this
6 section, the payment is not timely and is subject to the
7 provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

8 D. For the purposes of this section, "average tax
9 payment" means the total amount of taxes paid with respect to a
10 group of taxes listed under Subsection A of this section during
11 a calendar year divided by the number of months in that
12 calendar year containing a due date on which the taxpayer was
13 required to pay one or more taxes in the group."

14 Section 4. A new section of the Gasoline Tax Act is
15 enacted to read:

16 "[NEW MATERIAL] RETURNS BY RETAILERS--REQUIREMENTS--
17 EXCEPTION.--Retailers shall file information returns in form
18 and content as prescribed by the department on or before the
19 twenty-fifth day of the month following the month in which
20 gasoline is sold in New Mexico. The department may require
21 that the information returns be provided through electronic
22 means if the department provides an exception from that
23 requirement for retailers that purchase limited amounts of
24 fuel."

25 Section 5. A new section of the Gasoline Tax Act is

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1 enacted to read:

2 "[NEW MATERIAL] RETURNS BY RACK OPERATORS--REQUIREMENTS.--

3 Rack operators shall file information returns in form and
4 content as prescribed by the department on or before the
5 twenty-fifth day of the month following the month in which
6 gasoline is sold in New Mexico. The department may require
7 that an information return be provided through electronic means
8 if the department provides an exception from that requirement
9 for rack operators that distribute limited amounts of fuel."

10 Section 6. Section 7-13-5 NMSA 1978 (being Laws 1971,
11 Chapter 207, Section 5, as amended) is amended to read:

12 "7-13-5. TAX RETURNS--PAYMENT OF TAX.--Distributors shall
13 file gasoline tax returns in form and content as prescribed by
14 the secretary on or before the twenty-fifth day of the month
15 following the month in which gasoline is received in New
16 Mexico. Such returns shall be accompanied by payment of the
17 amount of gasoline tax due. The department may require that
18 the tax returns be provided through electronic means as long as
19 an exception is provided for distributors with limited amounts
20 of fuel distributed."

21 Section 7. Section 7-13-6 NMSA 1978 (being Laws 1971,
22 Chapter 207, Section 6, as amended) is amended to read:

23 "7-13-6. RETURNS BY WHOLESALERS--EXCEPTION.--Wholesalers
24 shall file information returns in form and content as
25 prescribed by the department on or before the twenty-fifth day

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1 of the month following the month in which gasoline is sold in
2 New Mexico. The department may require that the information
3 returns be provided through electronic means as long as an
4 exception is provided for wholesalers with limited amounts of
5 fuel sold. Sales of gasoline in quantities of thirty-five
6 gallons or more delivered into the fuel tanks of aircraft are
7 not wholesale sales for the purposes of this section, and
8 information returns on such sales need not be filed with the
9 department."

10 Section 8. Section 7-16A-2 NMSA 1978 (being Laws 1992,
11 Chapter 51, Section 2, as amended) is amended to read:

12 "7-16A-2. DEFINITIONS.--As used in the Special Fuels
13 Supplier Tax Act:

14 A. "bulk storage" means the storage of special
15 fuels in any tank or receptacle, other than a supply tank, for
16 the purpose of sale by a dealer or for use by a user or for any
17 other purpose;

18 B. "bulk storage user" means a user who operates,
19 owns or maintains bulk storage in this state from which the
20 user places special fuel into the supply tanks of motor
21 vehicles owned or operated by that user;

22 C. "dealer" means any person who sells and delivers
23 special fuel to a user;

24 D. "department" means the taxation and revenue
25 department, the secretary of taxation and revenue or any

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1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

3 E. "government-licensed vehicle" means a motor
4 vehicle lawfully displaying a registration plate, as defined in
5 the Motor Vehicle Code issued by:

6 (1) the United States or any state,
7 identifying the motor vehicle as belonging to the United States
8 or any of its agencies or instrumentalities;

9 (2) the state of New Mexico, identifying the
10 vehicle as belonging to the state of New Mexico or any of its
11 political subdivisions, agencies or instrumentalities; or

12 (3) any state, identifying the motor vehicle
13 as belonging to an Indian nation, tribe or pueblo or an agency
14 or instrumentality thereof;

15 F. "gross vehicle weight" means the weight of a
16 motor vehicle or combination motor vehicle without load, plus
17 the weight of any load on the vehicle;

18 G. "highway" means every road, highway,
19 thoroughfare, street or way, including toll roads, generally
20 open to the use of the public as a matter of right for the
21 purpose of motor vehicle travel and notwithstanding that the
22 same may be temporarily closed for the purpose of construction,
23 reconstruction, maintenance or repair;

24 H. "motor vehicle" means any self-propelled vehicle
25 or device that is either subject to registration pursuant to

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1 Section 66-3-1 NMSA 1978 or is used or may be used on the
2 public highways in whole or in part for the purpose of
3 transporting persons or property and includes any connected
4 trailer or semitrailer;

5 I. "person" means an individual or any other
6 entity, including, to the extent permitted by law, any federal,
7 state or other government or any department, agency,
8 instrumentality or political subdivision of any federal, state
9 or other government;

10 J. "rack operator" means the operator of a refinery
11 in this state, any person who blends special fuel in this state
12 or the owner of special fuel stored at a pipeline terminal in
13 this state;

14 K. "registrant" means any person who has registered
15 a motor vehicle pursuant to the laws of this state or of
16 another state;

17 L. "retailer" means a person who sells special fuel
18 generally in quantities of less than two hundred fifty gallons
19 and delivers the special fuel into the supply tanks of motor
20 vehicles;

21 [~~H.~~] M. "sale" means any delivery, exchange, gift
22 or other disposition;

23 [~~M.~~] N. "secretary" means the secretary of taxation
24 and revenue or the secretary's delegate;

25 [~~N.~~] O. "special fuel" means any diesel-engine fuel

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1 or kerosene used for the generation of power to propel a motor
2 vehicle, except for gasoline, liquefied petroleum gas,
3 compressed or liquefied natural gas and products specially
4 prepared and sold for use in aircraft propelled by turbo-prop
5 or jet engines;

6 [Θ-] P. "special fuel user" means any user who is a
7 registrant, owner or operator of a motor vehicle using special
8 fuel and having a gross vehicle weight in excess of twenty-six
9 thousand pounds;

10 [P-] Q. "state" or "jurisdiction" means a state,
11 territory or possession of the United States, the District of
12 Columbia, the commonwealth of Puerto Rico, a foreign country or
13 a state or province of a foreign country;

14 [Q-] R. "supplier" means any person, but not
15 including a rack operator or the United States or any of its
16 agencies except to the extent now or hereafter permitted by the
17 constitution of the United States and laws thereof, who
18 receives special fuel;

19 [R-] S. "supply tank" means any tank or other
20 receptacle in which or by which fuel may be carried and
21 supplied to the fuel-furnishing device or apparatus of the
22 propulsion mechanism of a motor vehicle when the tank or
23 receptacle either contains special fuel or special fuel is
24 delivered into it;

25 [S-] T. "tax" means the special fuel excise tax

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1 imposed pursuant to the Special Fuels Supplier Tax Act and,
2 with respect to a special fuel user, "tax" includes any special
3 fuel tax paid to another jurisdiction pursuant to a cooperative
4 agreement to which the state is a party pursuant to Section
5 9-11-12 NMSA 1978;

6 [F.] U. "user" means any person other than the
7 United States government or any of its agencies or
8 instrumentalities; the state of New Mexico or any of its
9 political subdivisions, agencies or instrumentalities; or an
10 Indian nation, tribe or pueblo or any agency or instrumentality
11 of an Indian nation, tribe or pueblo, who uses special fuel to
12 propel a motor vehicle on the highways; and

13 V. "wholesaler" means a person who is not a
14 supplier and who sells special fuel in quantities of two
15 hundred fifty gallons or more and does not deliver special fuel
16 into the supply tanks of motor vehicles."

17 Section 9. Section 7-16A-5 NMSA 1978 (being Laws 1992,
18 Chapter 51, Section 5) is amended to read:

19 "7-16A-5. SPECIAL FUEL INVENTORIES.--

20 A. On the day prior to the day in which the special
21 fuel excise tax rate is increased or decreased, each supplier,
22 dealer and bulk storage user shall take inventory of the
23 gallons of special fuel on hand.

24 B. Suppliers and bulk storage users shall report
25 total gallons of special fuel in inventory on the day prior to

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1 the day in which an increase in the special fuel excise tax
2 rate is effective and pay any special fuel inventory tax due.

3 ~~[G. Dealers shall maintain a record of the total~~
4 ~~gallons of special fuel in inventory on the day prior to the~~
5 ~~day in which an increase or decrease in the special fuel excise~~
6 ~~tax rate is effective and shall not increase or reduce the~~
7 ~~price of the special fuel sold until the inventory is disposed~~
8 ~~of in the ordinary course of business.]"~~

9 Section 10. Section 7-16A-9 NMSA 1978 (being Laws 1992,
10 Chapter 51, Section 9, as amended) is amended to read:

11 "7-16A-9. TAX RETURNS--PAYMENT OF TAX.--Rack operators
12 and special fuel suppliers shall file ~~[special fuel excise]~~ tax
13 returns in form and content as prescribed by the secretary on
14 or before the twenty-fifth day of the month following the month
15 in which special fuel is received in New Mexico. Payment of
16 the ~~[special fuel excise]~~ tax shall be made with or prior to
17 filing of the return. The department may require that the tax
18 returns be provided through electronic means as long as an
19 exception is provided for rack operators with limited amounts
20 of fuel sold and for suppliers with limited amounts of fuel
21 received."

22 Section 11. Section 7-16A-11 NMSA 1978 (being Laws 1992,
23 Chapter 51, Section 11) is amended to read:

24 "7-16A-11. TAX RETURNS--PAYMENT OF TAX--SPECIAL FUEL
25 USERS.--

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1 A. Except as otherwise provided in this section, a
2 special fuel [~~users~~] user shall file a special fuel excise tax
3 [~~returns~~] return in form and content as prescribed by the
4 secretary [~~on or before the twenty-fifth day of the month~~
5 ~~following the last day of each calendar quarter in which~~
6 ~~special fuel is used in New Mexico. Payment of the special~~
7 ~~fuel excise tax shall be made with or prior to filing of the~~
8 ~~return.~~

9 B. ~~Subject to the provisions of Subsection D of~~
10 ~~this section, a special fuel user may elect to report and pay~~
11 ~~the special fuel excise tax annually if the special fuel user~~
12 ~~was not liable for the weight distance tax and either:~~

13 (1) ~~had a total special fuel excise tax~~
14 ~~liability for the previous calendar year of less than five~~
15 ~~hundred dollars (\$500); or~~

16 (2) ~~has not previously been liable for the~~
17 ~~special fuel excise tax and expects a liability of less than~~
18 ~~five hundred dollars (\$500) annually.~~

19 C. ~~Subject to the provisions of Subsection D of~~
20 ~~this section, a special fuel user must report and pay the~~
21 ~~special fuel excise tax annually if the special fuel user is~~
22 ~~liable for the weight distance tax and has elected to pay the~~
23 ~~weight distance tax annually and either:~~

24 (1) ~~had a total special fuel excise tax~~
25 ~~liability for the previous calendar year of less than five~~

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1 ~~hundred dollars (\$500); or~~

2 ~~(2) has not previously been liable for the~~
3 ~~special fuel excise tax and expects a liability of less than~~
4 ~~five hundred dollars (\$500) annually.~~

5 ~~D. Any special fuel user described in Subsection B~~
6 ~~or C of this section shall file a written statement with the~~
7 ~~department on or before April 1 of the first year in which~~
8 ~~annual reporting and paying will be effective. Upon filing the~~
9 ~~written statement with the department, the total tax due for~~
10 ~~the current calendar year shall be paid to the department by~~
11 ~~January 25 of the following year. If, however, any special~~
12 ~~fuel user is or becomes delinquent in excess of thirty days in~~
13 ~~any payment of the special fuel excise tax, the user shall~~
14 ~~report and pay according to the provisions of Subsection A of~~
15 ~~this section. If any special fuel user who has filed a written~~
16 ~~statement under Subsection B or C of this section pays a total~~
17 ~~special fuel excise tax or total combined special fuel excise~~
18 ~~tax and weight distance tax of five hundred dollars (\$500) or~~
19 ~~more for any calendar year, the user shall report and pay under~~
20 ~~the provisions of Subsection A of this section] to conform to~~
21 ~~the due date for the special fuel excise tax return required by~~
22 ~~an interstate agreement to which the state is a party.~~

23 B. A special fuel user may elect to file and pay
24 the special fuel excise tax annually by conforming to the
25 annual filing requirements of an international fuel tax

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1 agreement to which the state is a party.

2 C. A special fuel user shall file a return in
3 accordance with the conditions and terms of the international
4 fuel tax agreement to which the state is a party."

5 Section 12. A new section of the Special Fuels Supplier
6 Tax Act is enacted to read:

7 "[NEW MATERIAL] RETURNS BY RETAILERS--REQUIREMENTS.--
8 Retailers shall file information returns in form and content as
9 prescribed by the department on or before the twenty-fifth day
10 of the month following the month in which special fuel is
11 purchased in New Mexico. The department may require that the
12 information returns be provided through electronic means if the
13 department provides an exception from that requirement for
14 retailers that purchase limited amounts of fuel."

15 Section 13. A new section of the Special Fuels Supplier
16 Tax Act is enacted to read:

17 "[NEW MATERIAL] RETURNS BY WHOLESALERS.--Wholesalers shall
18 file information returns in form and content as prescribed by
19 the department on or before the twenty-fifth day of the month
20 following the month in which special fuel is sold in New
21 Mexico. The department may require that the information
22 returns be provided through electronic means as long as an
23 exception is provided for wholesalers with limited amounts of
24 fuel sold."

25 Section 14. A new section of the Special Fuels Supplier

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1 Tax Act is enacted to read:

2 "[NEW MATERIAL] RETURNS BY RACK OPERATORS--REQUIREMENTS.--

3 Rack operators shall file information returns in form and
4 content as prescribed by the department on or before the
5 twenty-fifth day of the month following the month in which
6 special fuel is distributed in New Mexico. The department may
7 require that the information returns be provided through
8 electronic means if the department provides an exception from
9 that requirement for rack operators that distribute limited
10 amounts of fuel."

11 Section 15. A new section of the Special Fuels Supplier
12 Tax Act is enacted to read:

13 "[NEW MATERIAL] SPECIAL FUELS--AUTHORITY OF SECRETARY TO
14 TERMINATE INTERSTATE AGREEMENTS.--The secretary may terminate:

15 A. a cooperative agreement involving the taxation
16 of special fuels into which the secretary enters with another
17 state, the District of Columbia, the commonwealth of Puerto
18 Rico or any territory or possession of the United States; or

19 B. a multistate agreement involving the taxation of
20 special fuels into which the secretary enters."

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